

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan, acting through the Department of Attorney General's Health Care Fraud Division, on behalf of the Department of Community Health's Medical Services Administration (MSA) (collectively referred to as the "State"), and Memorial Healthcare Corporation (referred to as "Defendant"), and collectively referred to as the "Parties."

II. PREAMBLE

As a preamble to this Agreement, the State alleges the following:

A. Memorial Healthcare Corporation is a Michigan corporation, located at 800 West King Street, Owosso, Michigan, and owns and operates Memorial Health Care Home Healthcare Agency, located at 1480 North M52, Owosso, Michigan, and is a licensed Medicaid Program provider that has provided home healthcare and related services to Medicaid patients/recipients since July 30, 1982.

B. From 1995 through 1999, (the period of the covered conduct), Defendant and its agents knowingly made false statements and/or misrepresentations of material facts to the Medicaid Program, submitted false claims or caused false claims to be submitted to the Medicaid Program, and accepted payment for false claims. In reliance on Defendant's fraud, false statements, misrepresentation of material facts, knowing concealment of material facts, and

fraudulent claims, the State, through the Medicaid Program, paid the claims for Medicaid benefits submitted by or on behalf of Defendant.

C. Defendant took monies it wrongfully received from the Medicaid Program for its own use. Defendant did not repay, reimburse, or return to the Medicaid Program the moneys that it was not entitled to, or which exceeded the amount to which they were entitled to receive under the Medicaid Program.

D. From 1995 through 1999, Defendant, through its agents, provided certain services to Medicaid patients/recipients that were not covered by the Medicaid Program, but then submitted false billings to the Medicaid Program in which the actual services rendered were changed in order to receive payment from the Medicaid Program. From 1995 through 1999, Defendant, through its agents, provided home healthcare related services for Medicaid patients/recipients that were not actually homebound as required under the Medicaid Program's rules and regulations, and billed the Medicaid Program for those services as if the patients/recipients were homebound.

E. The State contends that Memorial Healthcare Corporation violated the Medicaid False Claims Act, MCL 400.601 *et seq.*

F. Memorial Healthcare Corporation denies the matters alleged in Paragraphs B through E above, and further specifically denies that it violated the Medicaid False Claims Act, MCL 400.601 *et seq.*

G. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have reached a full and final settlement as set forth below.

Execution of this Settlement Agreement and payment of moneys shall not be construed as an admission of civil or criminal wrongdoing.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration, the Parties agree as follows:

A. Memorial Healthcare Corporation agrees to pay to the State of Michigan \$651,207.04 (the "settlement amount") consisting of \$325,603.52, representing reimbursement to the Medicaid Program, and \$325,603.52, representing a civil penalty, as follows:

1) Memorial Healthcare Corporation shall deliver to the Department of Attorney General a certified check, cashier's check or money order payable to the State of Michigan in the amount of \$325,603.52 on November 22, 2002, and Memorial Healthcare Corporation shall deliver to the Department of Attorney General a certified check, cashier's check, or money order payable to the State of Michigan in the amount of \$325,603.52 on March 21, 2003.

B. Subject to the exceptions in Paragraph 5 below, the State (on behalf of its officers, agents, agencies and departments) agrees to release Memorial Healthcare Corporation, from any civil or administrative monetary claim the State has or may have under the Medicaid False Claims Act, MCL 400.601 *et seq.*, or the common law theories of breach of contract, unjust enrichment, or fraud or any other civil statute through common law theories, for the covered conduct set forth in Paragraphs II B, C and D.

C. Simultaneous with the execution of this Agreement, the Parties, through their counsel, shall execute a stipulation to entry of an order dismissing the pending action

denominated “Jennifer M. Granholm, *ex rel* People of the State of Michigan vs. Memorial Healthcare Corporation” (Ingham County Circuit Court Case No. 02-1202-CZ), without prejudice and without costs or attorneys fees.

D. The Parties agree that, if the payment of the settlement amount is not honored at the time of presentment at the bank on which it is drawn, or is otherwise found to be unpayable, this Agreement shall be null and void.

E. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Memorial Healthcare Corporation) are all of the following:

- 1) Any liability to the State (or its agencies) for any conduct other than the covered conduct; and
- 2) Any claims based upon such obligations as are created by this Agreement.

F. Defendant fully releases the State, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) that Memorial Healthcare Corporation asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the covered conduct and the State’s investigation and prosecution thereof.

G. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

H. Memorial Healthcare Corporation expressly warrants that it has reviewed its financial situation and that it currently is solvent, and expressly warrants that it can satisfy the financial obligations under this Agreement.

I. The effective date of the Agreement shall be when the final signatory signs the Agreement.

J. In the event Memorial Healthcare Corporation commences, or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Defendant's debts, or seeking to adjudicate Defendant as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Memorial Healthcare Corporation, for all or any substantial part of Memorial Healthcare Corporation, Defendant agrees as follows:

1) Memorial Healthcare Corporation's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and Defendant will not argue or otherwise take the position in any such case, proceeding or action that:

(a) Defendant's obligations under this Agreement may be avoided under 11 U.S.C. Section 547;

(b) Defendant was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State of Michigan hereunder; or

(c) The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendant.

2) In the event that Memorial Healthcare Corporation's obligations under this Agreement are avoided for any reason, including, but not limited to, the exercise of a

trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Memorial Healthcare Corporation. If the State of Michigan chooses to do so, Defendant agrees that:

(a) Any such claims, actions or proceedings brought by the State (including any proceedings to exclude Defendant from participation in the Medicaid Program) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that Defendant will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

(b) Defendant will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State of Michigan within ten calendar days of written notification to Memorial Healthcare Corporation, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

3) Memorial Healthcare Corporation acknowledges its agreement in this paragraph as provided in exchange for valuable consideration provided in this Agreement.

K. This Settlement Agreement contains the full and complete agreement between the Parties and shall not be modified in any manner except by written instrument executed by the Parties.

L. The undersigned individuals signing this Agreement on behalf of Memorial Healthcare Corporation represent and warrant that they are authorized by Memorial Healthcare Corporation to execute this Agreement. The undersigned State of Michigan signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

State of Michigan Department of Attorney General

By: Kurt E. Krause
Kurt E. Krause, Assistant Attorney General

Date: 11/4/02

Memorial Healthcare Corporation

By: John Frome

Date: 10/28/02

~~By: _____~~

~~Date: _____~~

E. William S. Shipman
E. William S. Shipman, Attorney for Memorial Healthcare Corporation

Date: 10/29/02